IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WA.No. 536 of 2007(D)

AGAINST THE JUDGEMENT IN WPC.11857/2005 Dated 07/06/2006
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APPELLANT: (RESPONDENT IN THE WRIT PETITION):

THE KERALA STATE ROAD TRANSPORT CORPORATION, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

RESPONDENTS: (PETITIONERS IN THE W.P):
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1. K. KRISHNAN, S/O. KUTTAN, WELDER GRADE II, K.S.R.T.C., PAPPANAMCODE.

2. D. KUTTAPPAN, S/O. DANIEL, WELDER GRADE II, K.S.R.T.C., POOVAR.

3. M. APPUKUTTAN, S/O.MADHAVAN NADAR, WELDER GRADE II, K.S.R.T.C., CENTRAL WORKS, PAPPANAMCODE.

BY ADV. SRI.N.UNNIKRISHNAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No. 536 of 2007

Dated 18th June, 2007

JUDGMENT

Radhakrishnan, J.

This appeal has been preferred by the Kerala State Road Transport Corporation aggrieved by the declaration granted by the learned single judge that the petitioners are entitled to count the period from the date of their advice for the purpose of reckoning their pension. Corporation has took up the stand that their qualifying service for pension is liable to be calculated only from the date of entry into service to the date of retirement in accordance with the pension rules.

2. Writ petition was preferred by the respondents herein seeking a declaration that they are entitled to count the period of service from the date of their advice for seniority and for pension and also for a writ of certiorari to quash Ext. P9 order passed by the Managing Director of the Corporation rejecting the claim of the respondents for reckoning the period from the date of advice by the

Kerala Public Service Commission for the grant of pensionary benefits. Counsel for the Corporation conceded the position that the date of advice can be reckoned for the purpose of counting seniority and not for the purpose of calculating the qualifying service for the purpose of pension. Corporation is aggrieved by that portion of the direction of the learned single judge to reckon the service from the date of advice for the purpose of pension, which, according to the Corporation, is against the relevant rules and will cause serious financial consequence to the Corporation. Identical issue came up for consideration before a Division Bench of this court in O.P. No 21672 of 2002 wherein the Bench held that the service of an employee commences only on the taking charge of an office and not by receipt of a letter recommending his name for appointment. The Bench referred to Rule 10 of the Kerala Service Rules Part III, Chapter II.

3. In order to support the claim for seniority, counsel for the respondents placed reliance on the decision of a Division Bench of this court in W.A. No 369 of 2006 wherein the Bench referred to Rule 27 (c) Part II of the Kerala State and Subordinate Service Rules and took the view that the rule specifically stipulates that seniority of such

incumbents shall be counted from the date of advice made by the Public Service Commission. Same is the view taken by another Division Bench of this court in W.A. No 1155 of 2002. In the above mentioned judgments this court held that the seniority has to be determined from the date of advice by the P.S.C as per Rule 27(c) of the K.S & S.S.R and so far as pensionary benefit is concerned it has to be determined as per Rule 10 of Part III K.S.R. Qualifying service for pension is duly defined. Rule 9, inter alia, provides that the service of an employee begins when he takes charge of the office to which he is appointed. Reference may be made to to Rule 10, which reads as follows:

> "The service of an employee does not qualify for pension unless he is appointed, his duties regulated, and paid by the Government or under conditions determined by the Government."

Above mentioned rule would clearly show that the service commences on the taking charge of an office and not on receipt of a letter recommending the name for appointment. Therefore, in our view, Corporation is justified in taking the view that the qualifying service of an employee for pension can be calculated only from the

date of entry into service till the date of retirement and not from the date of advice unlike in the case of fixing seniority. In such circumstances, we set aside the judgment of the learned single judge to the extent it holds that respondents are entitled to count the period of service from the date of advice for appointment till the date of retirement for the purpose of claiming pension.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINI C
Judge

18/06/2007
en

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